



The Protection of Plant Varieties and Farmers' Rights Act

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The Protection of Plant Varieties and Farmers' Rights Act (PPVFRA), which introduced intellectual property protection in Indian agriculture, faced its biggest test when PepsiCo India initiated legal proceedings against potato farmers of Gujarat for “illegally” growing its potato variety registered under the PPVFRA.

History of PPVFRA

- The PPVFRA was enacted in 2001 after engaging debates were held in the country on how intellectual property rights should be introduced in Indian agriculture after the country joined the World Trade Organisation in 1995 and agreed to implement the Agreement on **Trade-Related Aspects of Intellectual Property Rights (TRIPS)**.
- The choice before India was to either enact a law that protected the interests of farming communities or to accept the framework of plant breeders' rights given by the International Union for Protection of New Plant Varieties (**UPOV Convention**). The **latter option was rejected** primarily because the current version of UPOV, which was adopted in 1991, **denies the farmers the freedom to reuse farm-saved seeds and to exchange them with their neighbours**.
- Therefore, in the PPVFRA, India introduced a chapter on Farmers' Rights, which has three legs:
 - one, **farmers are recognised as plant breeders and they can register their varieties**;
 - two, **farmers engaged in the conservation of genetic resources** of landraces and wild relatives of economic plants and their improvement through selection and preservation **are recognised and rewarded**; and,
 - three, **protecting the traditional practices of the farmers of saving seeds** from one harvest and **using the saved seeds either for sowing for their next harvest or sharing** them with their farm neighbours.

PepsiCo issue

- The company applied for the registration of two hybrid potato varieties FL 1867 and FL 2027 in February 2011.

- These varieties were registered under the PPVFRA in February 2016 for a period of 15 years. PepsiCo marketed the latter variety under the trademark FC-5 and was claiming that the Gujarat farmers were illegally using this variety.
- But, planting a registered variety by the farmers is per se not an offence since the PPVFRA allows the farmers to re-use such varieties and to also share them with their neighbours, provided some conditions are met.
 - One is that the **farmers cannot sell “branded” seeds**, which, according to PPVFRA, means **“any seed put in a package or any other container and labelled in a manner indicating that such seed is of a variety protected”** under the Act.
 - The company claimed before the court that FC-5 was licensed to farmers to bring potatoes of the said variety on the buyback system. The FC-5 variety could have been made available and distributed anywhere, and without the law being violated.
- Also, the **FC-5 was registered as an “Extant Variety”**, which is also a **“Variety of Common Knowledge”**. It implies that the said variety of potato was already available in the country before it was registered and that there was “common knowledge” about this variety in the country.

International Union for Protection of New Plant Varieties (UPOV Convention)

- The International Union for the Protection of New Varieties of Plants (UPOV) is an intergovernmental organization with headquarters in Geneva (Switzerland).
- UPOV was established by the International Convention for the Protection of New Varieties of Plants. The **Convention was adopted in Paris in 1961** and it was revised in 1972, 1978 and 1991.
- UPOV's **mission is to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants**, for the benefit of society.
- The UPOV Convention provides the basis for members to encourage plant breeding by granting breeders of new plant varieties an intellectual property right: **the breeder's right**.
- In the case of a variety protected by a breeder's right, the **authorization of the breeder is required to propagate the variety for commercial purposes. The breeder's right is granted by the individual UPOV members**.
- Only the breeder of a new plant variety can protect that new plant variety. It is **not permitted for someone other than the breeder to obtain protection of a variety**.
- There are **no restrictions on who can be considered to be a breeder** under the UPOV system: a breeder might be an individual, a farmer, a researcher, a public institute, a private company etc.
- **India is not a member.**